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STATUS OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS

Letter dated 8 March 1995 from the Ambassador of the Federal Republic of Yugoslavia to the United Nations Office at Geneva addressed to the Chairman of the Commission on Human Rights

I have the honour to transmit, enclosed herewith, the annex containing the position of the Government of the Federal Republic of Yugoslavia concerning the comments on the report of the Secretary-General on the succession of States in respect of international human rights treaties (E/CN.4/1995/80), made by Slovenia, Croatia and the former Yugoslav Republic of Macedonia, published in documents E/CN.4/1995/122, A/50/75-E/1995/10 and A/50/78-E/1995/11, and to request you kindly to circulate this letter and its annex as official documents of the fifty-first session of the United Nations Commission on Human Rights, under item 17.

(Signed) Vladimir Pavicevic

GE.95-12309 (E)

ANNEX

The positions of the former Yugoslav republics, contained in documents A/50/75-E/1995/10, A/50/78-E/1995/11 and E/CN.4/1995/122 are aimed at denying the international legal continuity of the Federal Republic of Yugoslavia with the former Socialist Federal Republic of Yugoslavia in the treaties listed in the Secretary-General's report entitled "Succession of states in respect of international human rights treaties" (E/CN.4/1995/80). These positions are untenable for the following reasons:

(1) These States invoked United Nations General Assembly resolution 47/1 and United Nations Security Council resolutions 757 and 777 which are unrelated to the status of the Federal Republic of Yugoslavia in the said international treaties. They relate to its status in the United Nations (namely that the Federal Republic of Yugoslavia is not the only successor and cannot automatically continue membership in the United Nations). However, the opinion of the United Nations Under-Secretary-General for Legal Affairs on the scope of the United Nations General Assembly resolution 47/1 of 30 September 1992 does not provide a basis for the denial of the membership of the Federal Republic of Yugoslavia in the United Nations either ("The United Nations General Assembly resolution 47/1 neither cancels nor denies Yugoslavia's membership in the Organization.").

(2) The status of the Federal Republic of Yugoslavia as a full-fledged party to the international treaties signed by the former Socialist Federal Republic of Yugoslavia was explicitly confirmed by the legal opinion of the United Nations Under-Secretary-General for Legal Affairs, Mr. F. Jacklin, of 16 November 1993:

> "The status of Yugoslavia as a party to treaties was not affected by the adoption by the General Assembly of resolution 47/1 of 22 September 1992. By that resolution, the General Assembly decided that the Federal Republic of Yugoslavia (Serbia and Montenegro) shall not participate in the work of the General Assembly. It did not address Yugoslavia's status as a party to treaties."

(3) The opinions of the Badinter Arbitration Commission (Nos. 8, 10 and 11), noting the "disintegration of Yugoslavia", were adopted outside the mandate entrusted to it by the conflicting parties. As such, they are, according to the norms of international law relating to the arbitration, legally untenable. The continuity of the Yugoslav State regarding international treaties and its membership in international organizations can be supported by the practice of the United Nations and particularly by the opinion of the United Nations Legal Counsel in 1947 (which confirmed the continuity of India's membership in the United Nations after the secession of Pakistan), as well as by the subsequent United Nations practice (secession of Bangladesh from Pakistan and Singapore from Malaysia). In view of these facts, the invoking by Croatia, Slovenia and the former Yugoslav Republic of Macedonia of the practice of the United Nations, other international organizations and the norms of international law in denying the continuity of the Federal Republic of Yugoslavia with the former Socialist Federal Republic of Yugoslavia is not valid.

(4) The generalized and inaccurate references to the alleged non-application by the third States of bilateral treaties concluded previously with the former Socialist Federal Republic of Yugoslavia and following the secession of the former Yugoslav republics are equally untenable. Namely, only Austria, Germany, some European Union members and radical Islamic States explicitly denied the validity of, or cancelled, some bilateral agreements or severed diplomatic relations with the Federal Republic of Yugoslavia (New Zealand and Malaysia) on the basis of the "disintegration of the Socialist Federal Republic of Yugoslavia".

(5) It should be noted that the Vienna Conventions on the Succession of States, accepted as the basis for the negotiations within the International Conference on the Former Yugoslavia, although they have not yet entered into force, envisage different rights and treatment of the predecessor State vis-à-vis newly created States. They provide for the right of the predecessor State to the continuity with respect to international treaties, regardless of the fact that the principles and norms applicable to the succession of States are also applicable to the division of assets and liabilities.

(6) Furthermore, the requests of the above-mentioned States for equating their own status with that of the Federal Republic of Yugoslavia are not acceptable either from the political or moral standpoint and could create a negative precedent for other States, leading to possible broader destabilization of the international community, in view of the fact that their independence was gained by forcible secession, prohibited by international law.

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